

*** "REPORTABLE"**
HIGH COURT OF DELHI AT NEW DELHI

+ IA Nos.1726/07, 1727/07
and CS (OS) No. 1196/2006

Date of decision : December 20, 2007

M/S ARINITS SALES PVT. LTD. PLAINTIFF

! Through : Mr. Ram Kumar, Advocate
Mr. Ajay Malviya, Advocate

Versus

\$ M/S. ROCKWELL PLASTIC PVT. LTD. & ORS.
..... RESPONDENTS

^ Through : Mr. K.K. Aggarwal, Advocate

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? Yes
- (3) Whether the judgment should be reported in the Digest ? Yes

ARUNA SURESH, J.

1. Present suit has been filed by the plaintiff company against the defendants for recovery of Rs. 20,53,944/- under the summary provisions of Order 37 Code of Civil Procedure (hereinafter referred to 'CPC') and also interest @ 18% per

annum on the said amount till the filing of the suit amounting to Rs.12,16,766/-. In all a sum of Rs.32,70,710/- has been claimed against the defendants. Defendants No. 2 to 5 are the directors of the defendant No. 1 company. Defendant No. 1 through defendant No. 4 had been purchasing goods from the plaintiff against various bills (numbering 6) on different dates. The defendant issued ST – 15 form towards liability of Central Sales Tax. The goods were duly received by the defendant No. 1. Defendants issued 19 cheques towards payment of the price of the goods so purchased. However, the cheques on presentation were dishonoured as the defendants had stopped the payment of the cheques. Despite service of legal demand notice which the defendant refused to accept, the defendants failed to make the payment to the plaintiff. Hence, the present suit for recovery of money on the basis of above said dishonoured cheques.

2. After the summons for appearance were received by the defendants, they entered appearance within the statutory period. Thereafter, plaintiff moved an application for service of summons for judgment upon the defendants. The summons for judgment were duly served upon the defendants and they filed their application for leave to

defend the present suit. Defendants also moved an application under Order 7 Rule 10 CPC for return of the plaint disputing the territorial jurisdiction of this Court to entertain the present suit.

3. I have heard learned counsel for the parties and have carefully perused the record regarding the issue of territorial jurisdiction of this Court. Learned counsel for the defendants has submitted that this Court has no territorial jurisdiction to entertain the present suit as the defendant company had placed the purchase order with the plaintiff company at Faridabad. The plaintiff had supplied the goods and raised its invoices/bills from Faridabad. The defendant company is situated at village Kassar, Tehsil Bahadurgarh, District Jhajjar, Haryana and works for gain at the same address. It is urged that in view of the provisions of Section 20 CPC, no part of cause of action arose in Delhi. The cause of action, if any, arose within the jurisdiction of the State of Haryana and the plaintiff cannot invoke the jurisdiction of this Court for relief as sought by him in the suit. It is further argued that the ST-15 forms were issued by the defendant company towards liability of sales tax for all the purchases made from the plaintiff company which are applicable to inter state sales between

the parties, whereas if there is a sale/purchase at Delhi, the Central Sales i.e. C-Forum is required to be issued and this transaction also indicates that this Court has no territorial jurisdiction to entertain the present suit. The final limb of the argument is that all the cheques were issued by the defendant company in favour of the plaintiff drawn on State Bank of Bikaner & Jaipur, Delhi Rohtak Road, Bahadurgarh, District Rohtak in the State of Haryana. Therefore, present plaint is liable to be returned to the plaintiff for presentation in the competent Court of jurisdiction.

4. Learned counsel for the plaintiff has refuted these submissions and submitted that the defendants No. 2 & 3 are ordinarily residing and working for gain in Delhi and therefore, the suit falls under Section 20(b) CPC. He further submitted that on the reverse of the invoices it is specifically written that all disputes are subject to Delhi jurisdiction and were signed by the defendant No. 4 on behalf of all the defendants. Therefore, by consent the parties have agreed to submit to the jurisdiction of this Court their disputes which have arisen out of their business transactions. It is further pointed out by the learned counsel for the plaintiff that the cheques were deposited by

the plaintiff for clearance at Delhi. The defendants were liable to pay the payments to the plaintiff at Delhi and the plaintiff had instructed its employees to deliver the goods to the defendant from New Delhi on the request of the defendant. Defendants are appearing in the complaints filed under Section 138 of Negotiable Instruments Act at Patiala House Courts, Delhi and therefore, have submitted to the jurisdiction of Courts at Delhi. It is further alleged that the purchase orders were placed by the defendant and received by the plaintiff at head office of the plaintiff at New Delhi and it was the suggestion of the defendant to save the Central sales tax that the goods be supplied from Haryana. Therefore, the order was executed from Faridabad. According to him, this Court has the territorial jurisdiction to entertain the present suit.

5. For appreciating the submissions of the learned counsel for the parties, I feel the necessity of reproducing Section 20 CPC which reads as under:

“20. Other suits to be instituted where defendants reside or cause of action arises.--Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction--

(a) the defendant, or each of

the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.”

6. Thus, it is clear that plaintiff can file a suit within the local limits of the jurisdiction of a Court within which

(1) the defendant or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain.

(2) any of the defendants, where there are more than one, at time time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided the plaintiff gets the leave of the Court, or the defendants who do not reside, or carry on business, or personally work gain concedes to such

institutions.

(3) where the cause of action, wholly or in part, has arisen in favour of the plaintiff.

7. Section 20 CPC covers all the personal actions relating to person or movable property and the jurisdiction of the Court where such a claim can be filed. Such personal actions can be instituted in a court where the defendant actually resides or carries on business and either the leave of the Court has been taken or the other defendants consent to it or where the cause of action or part of it arises. The principle underlying clauses (a) and (b) is that the suit be instituted at the place where the defendant is able to defend it without any difficulty or problem. Under clause (c) all classes of suits can be instituted where the cause of action arose wholly or in part. It is for the plaintiff to prove that the Court has the jurisdiction to entertain the suit. Where no cause of action has arisen or where none of the defendants are residing or working for gain within the jurisdiction of a Court the said Court has no jurisdiction to entertain a suit.

8. Cause of action has to be ascertained from the facts stated

in the plaint and not from the pleadings raised in the written statement.

9. In the present case, defendant No. 1 company works for gain at village Kassar, Tehsil Bahadurgarh, District Jhajjar, Haryana. Defendants No. 2 to 5 are its directors. Since the defendant No. 1 is a company, defendants No. 2 to 5, who are its directors, cannot be held personally liable for the acts done for and on behalf of the company by them unless they make themselves personally liable by way of an agreement or any other document enforceable in law. As per the case of the plaintiff itself, defendant No. 4 had been placing the orders, receiving the goods and had issued the cheques on behalf of the company. Defendant No. 4 is residing at Bahadurgarh and is working for gain at Bahadurgarh only. Defendants No. 2 & 3 are residing in Delhi. Though pleaded in the plaint, the plaintiff has not shown their active participation in the business of the defendant No. 1 while having business dealings with the defendant No. 1. Not only this, the counsel for the plaintiff is unsuccessful in its efforts to invoke the jurisdiction of this Court under Section 20(b) CPC. It is nowhere pleaded in the plaint nor any document has been placed on the record to indicate that defendants No. 2, 3 & 5 had

acquiescenced to the presentation of the plaint within the territorial jurisdiction of this Court.

10. Learned counsel for the defendant referred to the following judgments:

- 1. *Steel Authority of India Ltd. v. M/s. Century Tubes Ltd. & Ors.* - 117 (2005) DLT 655.**
- 2. *Gujrat Insecticides Ltd. v. Jainsons Minerals & Anr.* - 140 (2007) DLT 465.**
- 3. *Mountain Mist Agro India (Pvt.) Ltd & Anr. v. Mr. S. Subramaniam* - 2007 X AD (Delhi) 143 decided on 24.10.2007.**

11. In ***Steel Authority of India Ltd. (supra)*** it was held by this Court that a company is an entity distinct from its directors and shareholders in absence of instrument fastening liability, liability can be fastened on directors of company only when malfeasance or misfeasance is established.

12. In this case, plaintiff has not pleaded any malfeasance or misfeasance on the part of the directors of the company i.e. defendants No. 2 to 5 so as to fasten their liability to pay the suit amount.

13. Learned counsel for the plaintiff has tried to state that as

per the terms and conditions contained at the back of the invoices which were signed by the defendant No. 4 on behalf of the defendant No. 1, the parties had agreed that all disputes are subject to Delhi jurisdiction only. Learned counsel for the defendants has submitted that by consent the parties cannot confer jurisdiction on a Court which does not have inherent jurisdiction to entertain a suit if no part of cause of action has arisen within the territorial limits of the said Court.

14. 'Cause of action' means bundle of facts which are necessary to be proved by the plaintiff, if traversed, in order to invoke the jurisdiction of a Court to get the judgment of that Court. Generally, the expression 'cause of action' is understood to mean a situation or state of facts that entitles a party to maintain an action in a Court.

15. In contracts regarding purchase of goods cause of action arises at a place where the contract is executed or a place where contract was to be performed or place where performance thereof was completed. Cause of action also arises in such like circumstances where money was expressly or impliedly payable. A suit can be filed where goods were delivered or price payable.

16. There is no dispute that where cause of action has arisen at different places, the parties can confer jurisdiction on a particular Court where a part of cause of action has arisen, for redressal of their disputes. In a suit on contract where two Courts have jurisdiction, choice of forum is with the plaintiff. Parties cannot confer jurisdiction even by consent on a Court where no part of cause of action has arisen and has no inherent jurisdiction to entertain a suit. Ouster of jurisdiction of all the courts which would have jurisdiction over the subject matter of dispute is unlawful and void. However, where there may be two or more competent courts which can entertain a suit consequent upon a part of the cause of action having arisen therewith, if the parties to the contract agree to vest jurisdiction in one such court to try the dispute which might arise between the parties, the agreement is valid and this agreement cannot be construed an agreement against the statute.

17. Now it is to be seen if in the present suit any part of cause of action arose within the jurisdiction of Delhi so as to invoke the jurisdiction of this Court to entertain the present suit. In reply to the application of the defendants under Order 7 Rule 10 CPC, the plaintiff admitted that the goods were supplied from Faridabad to Bahadurgarh at the

instance of the defendant. Whatever may be the reasons assigned for this supply, the fact remains that the goods were not supplied from Delhi as alleged in para 22 of the plaint. The plaintiff itself has contradicted its plea raised in the plaint that the goods were supplied from its office at New Delhi when he admitted in the reply to the application that the goods were supplied from Faridabad. Therefore, part of cause of action arose in Faridabad from where the goods were supplied or at Bahadurgarh where the goods were received by the defendant No. 1. All the invoices/bills were issued by the plaintiff company at Faridabad in the name of defendant No. 1 and the goods were to be delivered at Bahadurgarh, District Jhajjar, Haryana. Consequently, the defendant No. 1 issued the ST-15 form which relates to inter-state sale/purchase transactions so as to meet the liability of the defendants to pay the sales tax. Plaintiff in the plaint has also admitted that defendant had issued form ST-15 towards their liability to pay the sales tax for the goods received at Bahadurgarh. There is not a single document placed on the record to indicate that there was supply of chemicals from the head office of the plaintiff at Delhi. Plaintiff has also not placed on record any document to indicate that the purchase orders were placed by the defendants at Delhi.

18.The cheques numbering 19 which were issued by the defendant No. 1 towards payment of the due amount are drawn on State Bank of Bikaner and Jaipur, Bahadurgarh. These cheques on presentation were dishonoured by the drawee bank either for insufficiency of funds or payments stopped. Therefore, the cause of action if any arose on dishonourment of cheques was at Bahadurgarh. Learned counsel for the plaintiff has tried to convince the Court by stating that the cheques were presented for encashment at Delhi and there is a clause in the invoices i.e. Clause 4 that the cheques shall be drawn in the name of plaintiff Arinit Sales Corporation marked "A/C payee to be payable at Delhi only. I do not find any force in these submissions. It seems that plaintiff has filed a complaint under Section 138 of the Negotiable Instruments Act against the defendants. The fact remains that the jurisdiction of the criminal court may differ from the civil court to entertain a claim. Therefore, simply because the complaints have been filed at Delhi will not confer any jurisdiction in this Court.

19.Even the legal demand notice was sent by the plaintiff to defendants No. 1 & 4 at their Bahadurgarh addresses. From the pleadings placed on record, the plaintiff has failed to convince the Court that it has territorial

jurisdiction to entertain the present suit.

20.In ***Gujrat Insecticides Ltd. (supra)*** it was held:

“It is trite law that when more than one Court has the jurisdiction, parties may, by agreement, confer exclusive jurisdiction on one Court to the exclusion of all other Courts. At the same time, if a particular Court has no jurisdiction and it lacks inherent jurisdiction, the parties cannot confer jurisdiction upon the said Court by their consent. Therefore, what is to be seen is as to whether part of cause of action arose within the jurisdiction of Bharuch Court. If answer to this question is in the affirmative, then Bharuch Court will have exclusive jurisdiction. On the other hand if Bharuch Court lacks inherent jurisdiction, such a clause contained in the invoices would not be of any help to the defendants and the same would be void.”

21.In ***Mountain Mist Agro India (Pvt.) Ltd & Anr.***

(supra) where territorial jurisdiction of the Court was questioned, place of cause of action in respect of payment by cheque was shown to be the place where the cheques were presented for encashment, it was observed:

“Section 64(1) of the Negotiable Instruments Act, 1881, insofar as it relates to cheques,

stipulates that the cheques must be presented for payment to the drawee by or on behalf of the holder and that in default of such presentment, the other parties thereto are not liable thereon to such holder. This provision specifically indicates that unless there is proper presentment of the cheque, the drawer cannot be held liable in respect of the same. Proper presentment of the cheque requires that the same must be presented for payment to the drawee. In this case the drawee is the Oriental Bank of Commerce at Ootacamund. Therefore, in the facts of the present case, the presentment for payment of the amount represented by the cheque had to be made to the drawee, i.e., the Oriental Bank of Commerce at Ootacamund. The deposit of the cheque by the plaintiffs at their bankers (ICICI Bank, New Delhi) for collection is of no consequence. What is of importance is only the fact of presentment for payment and that has to be to the drawee which is the Oriental Bank of Commerce at Ootacamund."

22. Thus, it is clear that merely because the plaintiff had presented the cheques for encashment in Delhi with its bankers would not be of any indication that a part of cause of action had arisen in Delhi. In these circumstances, I find that the objections of the defendants raised in the application for leave to defend as well as in the application under Order 7 Rule 10 CPC regarding the territorial

jurisdiction of this Court is correct and is to be upheld by the Court.

23. Consequently, the application is allowed to the extent that this Court has no territorial jurisdiction to entertain the present suit. Therefore, the plaint along with original documents, if any, is ordered to be returned to the plaintiff for presentation in the competent court of jurisdiction with the directions to the registry to make necessary endorsements on the plaint in accordance with order 7 Rule 10(2) CPC within a period of one week.

DECEMBER 20, 2007
jk

ARUNA SURESH
(JUDGE)